REMARKS

I. Status of the Claims

Claims 1-32 are pending. Claims 1-22 stand rejected. Claims 23-32 are withdrawn from consideration by the Examiner as being directed to non-elected subject matter.

No amendments have been made in this response.

II. Declaration

The Examiner states that "[t]he declaration under 37 CFR 1.132 filed 4 May 2009 [("Declaration")] is insufficient to overcome the rejection of claims 1-22 based upon Dias in view of Legrand, further in view of Caes as set forth in the last Office action because: the facts presented are not germane to the rejection at issue." Office Action, page 2. The Examiner acknowledges that "the inventive composition was compared with Vaseline, isopropyl palmitate, and isopropyl mysristate." *Id.* However, the Examiner alleges that "the 35 USC 103 rejection over Dias cites a polydecene having more than 19 carbons . . . i.e. a polydecene of 20, 30, 40, 50, etc. carbons[,]" but "[t]he declaration, for instance, does not have a comparison group for a polydecene of 20 carbons." *Id.* The Examiner thus concludes that "when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness." *Id.* at page 3. Applicants respectfully disagree for at least the following reasons.

Applicant respectfully submits that the Examiner improperly construes the term "polydecene" to include a polydecene of 20 carbons. The specification states,

"[p]olydecenes of formula $C_{10n}H_{[(20n)+2]}$ with n ranging from 3 to 9 correspond to the name 'polydecene' in the CTFA Dictionary, 7th edition, 1997, of the Cosmetic, Toiletry and Fragrance Association, USA, and also to the same INCI name in the USA and in Europe." Specification, as-filed, at ¶[023]. By contrast, the CTFA Dictionary has a separate and distinct entry for "didecene", which corresponds to the dimer of decene, where n = 2, and the compound has 20 carbons. *See* Exhibit 1, CTFA Dictionary, p. 412. Applicant submits that the Examiner's use of the phrase "polydecene of 20 carbons," is inconsistent with the term polydecene as defined in the specification and the CTFA Dictionary. Clearly, the word "polydecene" encompasses compounds comprising at least 30 carbons, whereas a product with 20 carbons is called "didecene". Accordingly, the Examiner's suggestion for "a comparison group for a polydecene goup of 20 carbons" is improper.

In addition, as the record clearly indicates, Applicant continues to disagree that the Examiner has established a *prima facie* case of obviousness. *See, e.g.*, Submission under 37 C.F.R. § 1.114 filed May 4, 2009, pages 3-4. Instead, the Declaration is relied on by Applicant to show the unpredictability of the art and unexpected results attributable to the inclusion of polydecene in the claimed composition. Therefore, contrary to the Examiner's allegation, the test results as set forth in the Declaration are relevant to the question of obviousness.

Accordingly, Applicant respectfully requests the Examiner reconsider the Declaration as evidence of nonobviousness.

II. Rejection of Claims 1-22 under 35 U.S.C. § 103(a)

The Examiner rejects claims 1-22 under 35 U.S.C. § 103(a) as allegedly "being unpatentable" over U.S. Patent No. 6,540,791 to Dias (Dias), in view of U.S. Patent No. 6,260,556 to Legrand et al. (Legrand), further in view of U.S. Patent No. 6,423,306 to Caes et al. (Caes), and further in view of U.S. Patent No. 5,578,299 to Starch ("Starch"). *See* Office Action, pages 3-7. Applicants respectfully traverse the rejection for the reasons of record and for the following additional reasons.

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. *See* M.P.E.P. § 2142. In *KSR Int'l Co. v. Teleflex Inc.*, 82 U.S.P.Q.2d 1385 (2007), the Supreme Court confirmed that the "framework for applying the statutory language of §103" was still based on its landmark decision in *Graham v. John Deere Co. of Kansas City*, 148 U.S.P.Q. 459 (1966). Under *Graham*, there are four factors for consideration when determining whether an invention is obvious: (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the art; and (4) secondary considerations. 148 U.S.P.Q. at 467. "Such evidence . . . may include evidence of . . . unexpected results." M.P.E.P. § 2141. The obviousness or non-obviousness of the claimed invention is then evaluated in view of the results of these inquiries. *See Graham*, 148 U.S.P.Q. 467; *see also KSR*, 82 U.S.P.Q. 2d at 1388.

Dias discloses polydecene amongst a long list of organic conditioning oils, including paraffin oil, mineral oil and fatty acid esters such as isopropyl myristate and isopropyl palmitate. *See* Dias Col. 22, line 42 - Col. 25, line 15. Without the disclosure of the present invention, the Examiner has failed to point to any evidence to pick and

choose polydecene from the the long list of the organic conditioning oils as the lead compound in support of the obviousness rejection. In addition, the Examiner bases the obviousness rejection on the erroneous assumption that all of the hydrocarbon polymers having more than 19 carbons will exhibit similar properties. *See* Office Action, page 5. In fact, the instant specification discloses the drawbacks of using mineral oil and long chain hydrophobic fatty acid esters. *See* specification, as filed, at ¶¶ [010]-[013]. Furthermore, the test results in the Declaration demonstrate that compositions containing other organic conditioning oils could not provide the advantageous properties of compositions with polydecene. The paste formulated with polydecene remains malleable at low temperature, whereas the comparative compositions with Vaseline, isopropyl palmitate, and isopropyl mysristate, were solid and brittle. Declaration, page 4. Therefore, it is unpredictable to rely on the disclosure of the organic conditioning oils in Dias for forming compositions with desirable properties. The Examiner cannot factually support a *prima facie* case of obviousness.

Accordingly, Applicant respectfully requests this rejection be withdrawn.

CONCLUSION

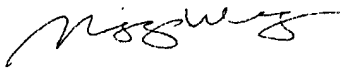
In view of the foregoing remarks, Applicant respectfully submits that the pending claims are not obvious in view of the references cited against the rejected claims. Applicant therefore requests reconsideration of the application, and the timely allowance of the pending claims.

If there is any fee due in connection with the filing of this Response, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Date: September 18, 2009

By: 

Ningling Wang
Reg. No. 52,412

EXHIBIT 1

International Cosmetic Ingredient Dictionary and Handbook

Seventh Edition
1997

Editors
John A. Wenninger
G. N. McEwen, Jr., Ph.D., J.D.

Volume 1

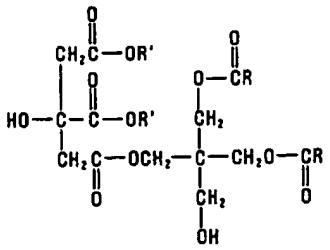
Published by
The Cosmetic, Toiletry, and Fragrance Association
1101 17th Street, N.W., Suite 300
Washington, DC 20036-4702

Functions: Antistatic Agent; Hair Conditioning Agent

Trade Name:
Dehyquart CEQ (Pulcra)

DICOCOYL PENTAERYTHRITYL DISTEARYL CITRATE

Definition: Dicocoyl Pentaerythrityl Distearyl Citrate is the organic compound that conforms to the formula:



where RCO- represents the fatty acids derived from coconut oil and R' represents the stearyl group.

Chemical Class: Esters

Function: Skin-Conditioning Agent - Emollient

Trade Name Mixtures:
Dehymuls E (Henkel)
Dehymuls E (Henkel KGaA)
Dehymuls E (Henkel/COSPHA)

DI-C12-15 PARETH-2 PHOSPHATE

Definition: Di-C12-15 Pareth-2 Phosphate is a complex mixture of diesters of phosphoric acid and C12-15 Pareth-2 (q.v.).

Chemical Class: Phosphorus Compounds

Functions: Surfactant - Cleansing Agent; Surfactant - Emulsifying Agent

Trade Name:
Nikkol DDP-2 (Nikko)

DI-C12-15 PARETH-4 PHOSPHATE

Definition: Di-C12-15 Pareth-4 Phosphate is a complex mixture of diesters of phosphoric acid and C12-15 Pareth-4 (q.v.).

Chemical Class: Phosphorus Compounds

Functions: Surfactant - Cleansing Agent; Surfactant - Emulsifying Agent

Trade Name:
Nikkol DDP-4 (Nikko)

DI-C12-15 PARETH-6 PHOSPHATE

Definition: Di-C12-15 Pareth-6 Phosphate is a complex mixture of diesters of phosphoric acid and a synthetic C12-15 ethoxylated alcohol containing an average of 6 moles of ethylene oxide.

Chemical Class: Phosphorus Compounds

Functions: Surfactant - Cleansing Agent; Surfactant - Emulsifying Agent

Trade Name:
Nikkol DDP-6 (Nikko)

DI-C12-15 PARETH-8 PHOSPHATE

Definition: Di-C12-15 Pareth-8 Phosphate is a complex mixture of diesters of phosphoric acid and a synthetic C12-15 ethoxylated alcohol containing an average of 8 moles of ethylene oxide.

Chemical Class: Phosphorus Compounds

Functions: Surfactant - Cleansing Agent; Surfactant - Emulsifying Agent

Trade Name:
Nikkol DDP-8 (Nikko)

DI-C12-15 PARETH-10 PHOSPHATE

Definition: Di-C12-15 Pareth-10 Phosphate is a complex mixture of diesters of phosphoric acid and a synthetic C12-15 ethoxylated alcohol containing an average of 10 moles of ethylene oxide.

Chemical Class: Phosphorus Compounds

Function: Surfactant - Cleansing Agent

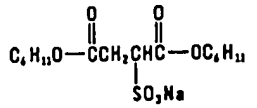
Trade Name:
Nikkol DDP-10 (Nikko)

DICYCLOHEXYL SODIUM SULFOSUCCINATE

CAS No.	EINECS No.
23386-52-9	245-629-3

Empirical Formula:
$C_{16}H_{26}O_7S \cdot Na$

Definition: Dicyclohexyl Sodium Sulfosuccinate is the sodium salt of the diester of cyclohexyl alcohol and sulfosuccinic acid. It conforms to the formula:



Information Sources: 21CFR178.3400, [illegible]

Chemical Class: Sulfosuccinates and Sulfosuccinamates

Function: Surfactant - Hydrotrope

Technical Names:
Butanedioic Acid, Sulfo-, 1,4-Dicyclohexyl Ester, Sodium Salt
Sodium 1,4-Dicyclohexyl Sulfobutanedioate
Acid
Succinic Acid, Sulfo-, 1,4-Dicyclohexyl Ester, Sodium Salt
Sulfosuccinic Acid, 1,4-Dicyclohexyl Ester, Sodium Salt

DICYCLOPENTADIENE/t-BUTYLCRESOL COPOLYMER

Definition: Dicyclopentadiene/t-Butylcresol Copolymer is a copolymer of dicyclopentadiene and t-butylcresol monomers.

Chemical Class: Synthetic Polymers

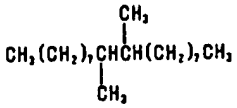
Function: Antioxidant

Trade Names:
Lowinox 22CP46 (Werke Lowi)
Lowinox CPL (Werke Lowi)

DIDECENE

Empirical Formula:
$C_{20}H_{42}$

Definition: Didecene is the dimer of 1-decene that conforms generally to the formula:



Chemical Class: Hydrocarbons

Function: Skin-Conditioning Agent - Occlusive

Trade Name:
Arlamol PA02 (ICI Surfactants)

DIDECYLDIMONIUM CHLORIDE

CAS No.	EINECS No.
7173-51-5	230-525-2

Empirical Formula:
$C_{22}H_{48}N \cdot Cl$

Definition: Didecyldimonium Chloride is the quaternary ammonium salt that conforms generally to the formula: